

United States District Court

Middle

DISTRICT OF

Pennsylvania

Kim Smith, Plaintiff

v.

George Weaver, et al., Defendants

BILL OF COSTS

Case Number: 1:CV-01-817

Judgment having been entered in the above entitled action on September 29, 2004 against Plaintiff
DATE

The Clerk is requested to tax the following as costs:

Fees of the Clerk.....\$ _____

Fees for service of summons and subpoena.....\$ _____

Fees of the court reporter for all or any part of the transcript necessarily.....\$ _____ 321.90
obtained for use in the case

Fees and disbursements for printing

Fees for witnesses (itemize on reverse side)

Fees for exemplification and copies of papers necessarily obtained for use in the case

Docket Fees under 28 U.S.C. 1923.....\$ _____

Costs as shown on Mandate of Court of Appeals

Compensation of court-appointed experts

Other Costs (Please Itemize).....\$ _____

TOTAL \$ 321.90SPECIAL NOTE: Attach to your bill an itemization and documentation for requested costs in all categories.**DECLARATION**

I declare under penalty of perjury that the foregoing costs are correct and were necessarily incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy of this bill was mailed today with postage prepaid to:

Mr. Kim Smith (CT-2162), SCI-Coal Township, 1 Kelley Drive, Coal Township, PA 17866-1021Signature of Attorney: s/ John J. TalaberName of Attorney: John J. Talaber, Assistant Counsel, Pa. DOC, Office of Chief Counsel, 55 Utley
Drive, Camp Hill PA, 17011For: Pennsylvania Department of Corrections* Date: October 26, 2004

*Indemnifying Defendants: (1) Weaver; (2) K. Allen; (3) Pat Yarger; (4) Burks; (5) Johns; (6) H. Zimmerman; (7) Bureau of Health Care; (8) Frank Gillis; (9) James Morgan; (10) Ersek; (11) Whysong; (12) A. Zimmerman (13) Ambrose; (14) Wolfgang; (15) Bernas; (16) Jordon; (17) Learn; (18) Kandis Dascani; (19) Voeckler; (20) Sedwell; (21) Henry; (22) Catherine McVey; and (23) Wetz., employees (or former employees) of the Department.

Costs are taxed in the amount of _____ and included in the judgement.

By: _____

Clerk of Court

Deputy Clerk

Date

WITNESS FEES (computation, cf. 28 U.S.C. 1821 for statutory fees)								
NAME AND RESIDENCE	ATTENDANCE		SUBSISTENCE		MILEAGE		Total Cost Each Witness	
	Days	Total Cost	Days	Total Cost	Days	Total Cost		
					TOTAL			

NOTICE

Section 1924, Title 28, U.S. Code (effective September 1, 1948) provides:

“Sec. 1923. Verification of bill of costs.”

“Before any bill of costs is taxed, the party claiming any item of cost or disbursement shall attach thereto an affidavit, made by himself or his duly authorized attorney or agent having knowledge of the facts, that such item is correct and has been necessarily incurred in this case and that the services for which fees have been charged were actually and necessarily performed.”

See also Section 1920 of Title 28, which reads in part as follows:

“A bill of costs shall be filed in the case and upon allowance, included in the judgment or decree.”

The Federal Rules of Civil Procedure contain the following provisions:

Rule 54 (d)

“Except where express provision therefore is made either in a statute of the United States or in these rules, costs shall be allowed as of course to the prevailing party unless court otherwise directs, but costs against the United States, its officers, and agencies shall be imposed only to the extent permitted by law. Costs may be taxed by clerk on one day's notice. On motion served within 5 days thereafter, the action of the clerk may be reviewed by the court.”

Rule 6 (e)

“Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period.”

Rule 58 (In Part)

“Entry of the judgment shall not be delayed for the taxing of costs.”

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

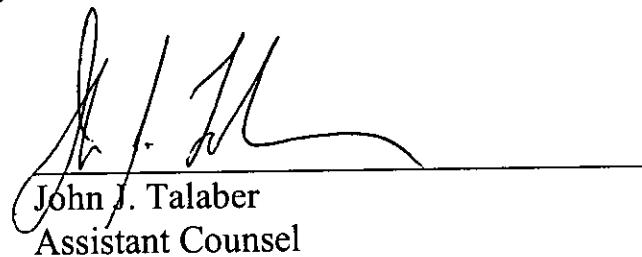
KIM SMITH, :
: :
Plaintiff, : Civil Action No. 1:CV-01-817
: :
v. : (Judge William W. Caldwell)
: :
GEORGE WEAVER, et. al., :
: :
Defendants. : :

ATTORNEY'S DECLARATION

I, John J. Talaber, Governor's Office of General, assigned to the Department of Corrections, Office of Chief Counsel as an Assistant Counsel, being duly authorized according to law, under the penalty for perjury set forth at 18 U.S.C. § 1746, do hereby affirm that to the best of my knowledge, information, and belief:

1. On September 29, 2004, the Honorable William W. Caldwell adopted the August 7, 2003 (doc. 151) report and recommendation of the Magistrate Judge; granted the Corrections Defendants' Motion for Summary Judgment; and directed the Clerk of Court to close this file. *See* Order (doc. 178), attached hereto as Exhibit A.
2. That same day the Clerk of Court entered a judgment on behalf of the Corrections Defendants. *See* Judgment (doc. 179), attached hereto as Exhibit B.

3. The Department of Corrections, for purposes of this civil rights action, provided its employees (or former employees) named as defendants with a Commonwealth attorney to represent them; and with indemnification of costs and expenses related to the litigation costs in this case. *See Commonwealth Attorneys Act, 71 Pa.C.S.A. §732 et seq., see also, Entitlements for Commonwealth Employees, 4 Pa.Code §39 et seq.*
4. The Department of Corrections, through its indemnification of the Corrections Defendants, paid stenographer Jill M. Fry, of R.D.1, Box 338, Sunbury, PA 17801, three hundred twenty-one dollars and ninety cents (\$321.90) for the costs actually and necessarily performed by deposing Plaintiff Kim Smith on May 17, 2002. *See* Invoice dated June 25, 2002, redacted in relevant part concerning either the Plaintiff's or the Court Stenographer's Social Security Number, attached hereto as Exhibit C.



John J. Talaber
Assistant Counsel

Date: October 25, 2004

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

KIM SMITH, :
Plaintiff :
vs. : CIVIL NO. 1:CV-01-0817
: (Judge Caldwell)
: :
JAMES MORGAN, et al.,
Defendants : :
:

O R D E R

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

In this civil rights action, the pro se prisoner-plaintiff sets forth a variety of claims, the principal ones concerning medical treatment. We are considering the report of the magistrate judge and Plaintiff's objections to the report. We agree with the magistrate judge's proposed disposition of the case except for the recommendation that service be made on the lone remaining defendant, Dr. Kort, and that the matter be remanded to the magistrate judge for consideration of the claims against Dr. Kort.

The amended complaint alleges that Dr. Kort intentionally withheld treatment for Plaintiff's back and his Hepatitis C and prevented him from obtaining a C-Pap machine. These issues were addressed in the Wexford defendants' motion for summary judgment. Additionally, the claims against Dr. Kort are

time-barred; even on the date of the report, Dr. Kort could have raised the defense of the statute of limitations.

Accordingly, this 29th day of September, 2004, upon consideration of the report (doc. 151) of the magistrate judge, filed August 7, 2003, and the objections that were filed (doc. 154, 155, and 160) and upon independent review of the record, it is ordered that:

1. The magistrate judge's report is adopted with the exception of the recommendation as to Defendant Dr. Kort.
2. The Plaintiff's motion for temporary restraining order (doc. no. 93) is denied.
3. The Corrections' Defendants' motion for summary judgment (doc. 99), is granted.
4. The Wexford Defendants' motion for summary judgment (doc. no. 100), is granted.
5. The Clerk of Court is directed to amend the caption of this case to include the following individuals as defendants in this action: Edward Mason, Captain Glenny, Dr. Kort, Unit Manager Smith, and Counselor Dunn.
6. The Clerk of Court is directed to amend the caption of this case to terminate the following individuals as defendants in this action: K. Grove, Morgan, Morder, Bivanio, Henry, Catherine C. McVey, Kerstetter, and Wetz.
7. The Clerk of Court shall enter judgment in favor of all defendants and against Plaintiff.
8. The Clerk shall close this file.

9. Any appeal of this order would not be
in good faith.

/s/William W. Caldwell
William W. Caldwell
United States District Judge

Talaber, John

From: PAMDEfilingsstat@pamd.uscourts.gov
Sent: Wednesday, September 29, 2004 3:22 PM
To: pamd_ecf_nef@pamd.uscourts.gov
Subject: Activity in Case 1:01-cv-00817-WWC Smith v. Weaver, et al "Order on Motion for TRO"

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U.S. District Court

Middle District of Pennsylvania

Notice of Electronic Filing

The following transaction was received from jc, entered on 9/29/2004 at 3:21 PM EDT and filed on 9/29/2004

Case Name: Smith v. Weaver, et al

Case Number: 1:01-cv-817

Filer:

WARNING: CASE CLOSED on 09/29/2004

Document Number: 178

Docket Text:

ORDER IT IS ORDERED THAT: 1) The mag. judge's report is adopted with the exception of the recommendation as to deft Dr. Kort. 2) The pltf's mtn for TRO [93] is denied. 3) The Corrections' Defendants' mtn for S/J [99] is granted. 4) The Wexford Defendants' mtn for S/J [100] is granted. 5) The Clerk of Court is directed to amend the caption of this case to include the following individuals as defendants in this action: Edward Mason, Captain Glenny, Dr. Kort, Unit Manager Smith, and Counselor Dunn. 6) The Clerk of Court is directed to amend the caption of this case to terminate the following individuals as defts in this action: K. Grove, Morgan, Morder, Bivanio, Henry Catherine C. McVey, Kerstetter, and Wetz. 7) The Clerk of Court shall enter judgment in favor of all defts and against pltf. 8) The Clerk shall close this file. 9) Any appeal of this order would not be in good faith. Signed by Judge William W. Caldwell on 9/29/04 (jc)

The following document(s) are associated with this transaction:

Document description: Main Document

Original filename: n/a

Electronic document Stamp:

[STAMP_dcecfStamp_ID=1027698419 [Date=9/29/2004] [FileNumber=596270-0]
[33e7822e7cda443a66b2f6f4efa361e417455fcb5be86ef1924d7432b88a49442228
72823658f6f13046df0ca66724c19ecb0fbde69d7e3427b5468a98b3830d]]

1:01-cv-817 Notice will be electronically mailed to:

Samuel H. Foreman sforeman@wglaw.com

Laura J. Neal lneal@state.pa.us, debryan@state.pa.us; wfairall@state.pa.us, tmcculloug@state.pa.us

John J. Talaber jtalaber@state.pa.us, reroberts@state.pa.us; tmcculloug@state.pa.us; wfairall@state.pa.us

1:01-cv-817 Notice will be delivered by other means to:

Kim Smith
CT-2162
SCI - COAL TOWNSHIP
1 Kelley Drive
Coal Township, PA 17866-1021

AO 450 (Rev. 5/85) Judgment in a Civil Case

United States District Court
MIDDLE DISTRICT OF PENNSYLVANIA

JUDGMENT IN A CIVIL CASE

Kim Smith,

Plaintiff,

v.

CASE NUMBER: 1:CV-01-817

George Weaver, Kathy Allen, Pat Yarger, Sharon Burks, Dr. Robyn Johns, Hazel Zimmerman, Wexford Health Services, Inc., Bureau of Health Care, Frank Gillis James Morgan, Ronald Long, Craig Hoffman, Harry Ersek, Gerald Whysong Angela Zimmerman, Melody Baker, Nancy Ambrose, Lynn Wolfgang, Mary Bernas, McLaughlin, Tim Jordon, John Learn, Kanbis Dascani, Voeckler, Wilma Sedwell, Edward Mason, Robert Glenny, Dr. Kort, Raymond Smith, John Dunn and Wendy Wright

FILED
HARRISBURG, PA

SEP 29 2004

Defendants.

MARY E. D'ANDREA, CLERK
Per Jill Cardile

- Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.
- Decision by Court.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that summary judgment be and is hereby entered in favor of Defendants, George Weaver, Kathy Allen, Pat Yarger, Sharon Burks, Dr. Robyn Johns, Hazel Zimmerman, Wexford Health Services, Inc., Bureau of Health Care, Frank Gillis, James Morgan, Ronald Long, Craig Hoffman, Harry Ersek, Gerald Whysong, Angela Zimmerman, Melody Baker, Nancy Ambrose, Lynn Wolfgang, Mary Bernas, McLaughlin, Tim Jordon, John Learn, Kandis Dascani, Voeckler, Wilma Sewell, Edward Mason, Robert Glenny, Dr. Kort, Raymond Smith, John Dunn and Wendy Wright against Plaintiff, Kim Smith.

Date: September 29, 2004

Mary E. D'Andrea, Clerk of Court



(By) Jill Cardile, Deputy Clerk

Talaber, John

From: PAMDEfilingstat@pamd.uscourts.gov
Sent: Thursday, September 30, 2004 9:25 AM
To: pamd_ecf_nef@pamd.uscourts.gov
Subject: Activity in Case 1:01-cv-00817-WWC Smith v. Weaver, et al "Judgment"

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U.S. District Court

Middle District of Pennsylvania

Notice of Electronic Filing

The following transaction was received from jc, entered on 9/30/2004 at 9:24 AM EDT and filed on 9/29/2004

Case Name: Smith v. Weaver, et al

Case Number: 1:01-cv-817

Filer:

WARNING: CASE CLOSED on 09/29/2004

Document Number: 179

Docket Text:

JUDGMENT IT IS ORDERED AND ADJUDGED that summary judgment be and is hereby entered in favor of Defendants, George Weaver, Kathy Allen, Pat Yarger, Sharon Burks, Dr. Robyn Johns, Hazel Zimmerman, Wexford Health Services, Inc., Bureau of Health Care, Frank Gillis, James Morgan, Ronald Long, Craig Hoffman, Harry Ersek, Gerald Whysong, Angela Zimmerman, Melody Baker, Nancy Ambrose, Lynn Wolfgang, Mary Bernas, McLaughlin, Tim Jordon, John Learn, Kandis Dascani, Voeckler, Wilma Sewell, Edward Mason, Robert Glenny, Dr. Kort, Raymond Smith, John Dunn and Wendy Wright and against Plaintiff, Kim Smith. (jc)

The following document(s) are associated with this transaction:

Document description: Main Document

Original filename: n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1027698419 [Date=9/30/2004] [FileNumber=596718-0]
 [8818951423ecfe5f3d477a28f49fd3cea651b5f0eeaaa703a8b7ff86ab65223b9cbf
 2ceee3383984620657179a09e8b974ed88d23552dbaa463847130c203be8]]

1:01-cv-817 Notice will be electronically mailed to:

Samuel H. Foreman sforeman@wglaw.com

Laura J. Neal lNeal@state.pa.us, debryan@state.pa.us; wfairall@state.pa.us, tmcculloug@state.pa.us

John J. Talaber jtalaber@state.pa.us, reroberts@state.pa.us; tmcculloug@state.pa.us; wfairall@state.pa.us

1:01-cv-817 Notice will be delivered by other means to:

Kim Smith
 CT-2162

Jill M. Fry

R. D. 1
 Box 338
 Sunbury, PA 17801
 (570) 988-4650

Bill To:

John J. Talaber, Esquire
 c/o Deb Wydra
 Department of Corrections
 55 Utley Drive
 Camp Hill, PA 17011

Smith v. Morgan

Handwritten

Invoice

Number: 1018

Date: June 25, 2002

Ship To:

John J. Talaber, Esquire
 c/o Deb Wydra
 Department of Corrections
 55 Utley Drive
 Camp Hill, PA 17011

Social Security Number

Terms
 upon receipt

Date	Description	pages/hours	Rate	Amount
5-17-02	Kim Smith Deposition	106.00	2.65	280.90
5-17-02	appearance fee	1.00	35.00	35.00
5-17-02	Postage	1.00	6.00	6.00

Approved
 1500-7150
 JMF
 7/5/02

Total \$321.90

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

KIM SMITH, :
: :
Plaintiff, : :
: Civil No. 1:01-0817
: :
v. : (Judge William W. Caldwell)
: :
GEORGE WEAVER, et al., :
: :
Defendants. : :

CERTIFICATE OF SERVICE

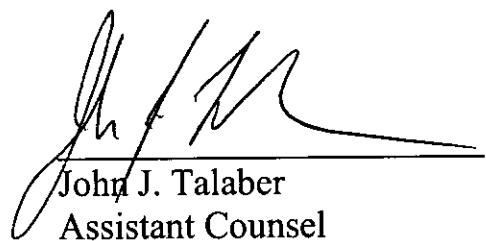
I undersigned hereby certify that a copy of the *Corrections Defendants' Bill of Costs* in this matter was served upon the person(s) in the manner indicated below.

Service by first-class mail
addressed as follows:
(On Tuesday, October 26, 2004)

Kim Smith, CT-2162
SCI-Coal Township
1 Kelley Drive
Coal Township, PA 17866-1021

Service via E.C.F.:

Samuel H. Forman, Esquire



John J. Talaber
Assistant Counsel

PA Department of Corrections
55 Utley Drive
Camp Hill, PA 17011
(717) 731-0444

Dated: October 26, 2004